

Banubai Vs. Shivasharanappa

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Court : Karnataka

Decided On : Mar-20-2003

Reported in : III(2003)BC168; 2003CriLJ2419; ILR2003KAR1996;
2003(3)KarLJ466

Judge : K. Bhakthavatsala, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200, 256, 378(4) and 482; ;[Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Criminal Appeal No. 382/2003

Appellant : Banubai

Respondent : Shivasharanappa

Advocate for Def. : Ajit J. Gunjal, Adv.

Advocate for Pet/Ap. : K. Appa Rao, Adv.

Judgement :

ORDER

Bhakthavatsala, J.

1. This is complainant's Criminal Appeal filed under Section 378(4) of Code of Criminal Procedure directed against order dated 20.6.1998 passed in C.C. No.

526/1997 on the file of III Additional J.M.F.C., Gulbarga, dismissing the complaint for non-prosecution and also recording an order of acquittal in favour of the Accused for the offence under Section 138 of the [Negotiable Instruments Act, 1881](#).

2. The Respondent/Accused is represented by Sri Ajit J Gunjal.

3. The brief facts of the case leading to the filing of the Appeal by the Complainant may be stated as under:

The Appellant/Complainant filed a private complaint under Section 200 of Cr.P.C., against the Accused contending that the Accused had committed an offence under Section 138 of the Negotiable Instruments Act. The case was registered in C.C. 576/1997 on the file of III Additional J.M.F.C., Gulbarga. On 20.6.1998, when the case had been posted for evidence and for issuance of N.B.W to Accused, the Accused voluntarily present, but the Complainant was absent. On behalf of the accused, an application was filed to recall N.B.W. The same was allowed and N.B.W., issued against the accused was recalled. The learned Counsel appearing for the Complainant filed an exemption application under Section 256 of Cr.P.C. enclosing the telegram sent by the Complainant and prayed for an adjournment of the case on the ground that the Complainant was sick. But the learned Magistrate rejected the exemption application on the ground that the Complainant remained absent since 21.2.1998 and therefore dismissed the Complaint for default and also acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act. The Complainant, feeling aggrieved, preferred Criminal Revision Petition in No. 87/1998 on the file of I Additional Sessions Judge, Gulbarga. The accused also entered appearance in the said case before the Sessions Judge. After hearing arguments, the learned Sessions Judge formulated a point viz., 'Whether the Sessions Court has jurisdiction to entertain Revision Petition to grant the relief, as prayed for?' For the reasons recorded by the learned Sessions Judge, he held that the Revision Petition was not maintainable, but an appeal was maintainable. Therefore, the complainant initially filed Criminal Petition under Section 482 of Cr.P.C., before this Court challenging the order of the learned Sessions Judge. On 3.2.2003, the learned Judge of this Court, at the request of

the learned Counsel for the petitioner, converted the Criminal Petition into an appeal. Thus, the Criminal Petition was converted into Criminal Appeal under Section 378(4) of Cr.P.C. Thus, the Complainant is before this Court challenging the order of the learned Magistrate.

4. Heard arguments of the learned Counsels for the petitioner and Respondent/Accused.

5. During the course of argument, the learned Counsel appearing for the Complainant/appellant cited the decision reported in MEERA SHRIPAT ADMANE v. CHIEF OFFICER, SANGAMNER MUNICIPAL COUNCIL AND ORS, 2001 (4) Supreme 429. He also submitted that as on the date of dismissal of the Complaint, the Complainant was aged about 70 years and due to her sickness, she had sent a telegram to the learned Counsel to seek for exemption of personal appearance of the Complainant, but the learned Magistrate rejected the same and consequently dismissed the Complaint and also recorded an acquittal as against the Accused for the offence under Section 138 of the Negotiable Instruments Act. On the other hand, Sri Ajit J. Gunjal, the learned Counsel appearing for the Respondent/Accused, submitted that as per the instructions given by the Accused, no such telegram was produced while seeking exemption of the Complainant.

6. Perused the order of the learned Magistrate passed on 20.6.1998. It is crystal clear from the order sheet dated 20.6.1998 in C.C.No. 526/1997 that the accused himself remained absent earlier and therefore N.B.W. was to be issued. But on 20.6.1998, the Accused voluntarily appeared and prayed for recalling N.B.W., and the same was done. Since the Complainant was not present, the learned Counsel for the Complainant moved an application seeking exemption of personal appearance of the Complainant by filing an appropriate application along with the telegram sent by the Complainant. But, the learned Magistrate has dismissed the exemption application on the ground that the Complainant was absent since 21.2.1998. From the above, it is crystal clear that while moving the exemption application, a telegram was enclosed. Therefore, the contention of the learned Counsel for the Accused that no such telegram was enclosed along with the exemption application, cannot be accepted.

7. With regard to the point of maintainability of the Revision Petition, the learned Sessions Judge has rightly held that Revision was not maintainable and therefore the order passed by the learned Sessions Judge dismissing the Revision Petition as not maintainable, does not call for interference.

8. However, the decision rendered in Meera's case, as cited by the learned Counsel for the appellant is very much avail to the case of the appellant. In the above - said Meera's case also, the complaint was dismissed on 14.7.1992 on account of non-appearance of the Complainant and the Accused persons were acquitted. As against the said order, the Complainant initially filed an application for restoration and that restoration application having been dismissed, the Complainant moved by filing a revision. When it was pointed out that the revision would not be maintainable, then the Complainant approached for grant of leave in the year 1995. The High Court, however, not being impressed by the reasons for the delay in moving the Court, appeal was dismissed. Thereafter, the Complainant approached the Supreme Court of India. The sole grievance of the Complainant in that case was that on the date the complaint stood dismissed for non-appearance of the Complainant, she was observing 'shraddha' religious rituals on account of which she could not attend the Court and then for the delay in question, the Complaint was ill advised to move for restoration and a revision and therefore, in the fitness of things, the Apex Court held that the matter should be remitted back to the Magistrate for continuing the complaint proceedings for disposal. Accordingly, the Apex Court set aside the impugned order of the High Court and allowed the Appeal and directed the Magistrate concerned to dispose of the complaint case at an early date. The Complainant was also directed to be present before the concerned Magistrate on a particular date.

9. In the case on hand, since the Complainant was sick and aged about 70 years, she was unable to present personally before the Court, and therefore she sent a telegram and the Advocate appearing for the Complainant moved the learned Magistrate seeking exemption for personal appearance of the Complainant. But the learned Magistrate, without assigning reasons, rejected the application, dismissed the complaint and also acquitted the Accused. Thereafter, the Complainant filed Revision Petition before the learned Sessions Judge, who held

that the revision was not maintainable. No doubt, in the instant case, there is no specific mention in the pleadings that the appellant was ill-advised to file a Revision Petition before the Sessions Court, but it is implicit that on account of ill-advise of the Advocate appearing for the Complainant, a Revision Petition was filed and the same came to be dismissed by the learned Sessions Judge on the ground that Revision Petition was not maintainable. Therefore, the Complainant has now approached this Court by filing an Appeal.

10. In view of the circumstances of the case on hand that five cheques all amounting to Rs. 3,50,000/- issued by the Accused were dishonoured, and the decision rendered by the Apex Court in the above said Meera's case, there is no impediment to condone the delay in question and set aside the order of the learned Magistrate and remit the case back to the learned Magistrate to dispose of the Complaint at an early date. Therefore, I pass the following order-The Criminal Appeal is allowed and the impugned order dated 20.6.1998 passed in C.C.No. 526/1997 on the file of III Additional J.M.F.C., Gulbarga, is set aside and the case is remitted back to the learned Magistrate, with a direction to dispose of the case at an early date.

The Complainant and the Accused are directed to be present before the concerned Magistrate on 16.4.2003 for further proceedings.

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